

So Ordered.



Patina C Williams

**Patricia C. Williams
Bankruptcy Judge**

Dated: November 16th, 2012

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

LLS AMERICA, LLC.

Debtor.

No. 09-06194-PCW11

BRUCE P. KRIEGMAN, solely in
his capacity as court-appointed
Chapter 11 Trustee for LLS Americ
LLC,

Plaintiff.

Adv. No. 11-80296-PCW

vs.

267406 BC, LTD., et al.,

Defendants

**MEMORANDUM DECISION RE:
CERTAIN DEFENDANTS' MOTIONS
TO DISMISS**

This adversary is one of hundreds commenced by the trustee of the LLS America, LLC (“LLS America”) bankruptcy estate, which adversaries seek to recover money paid by the debtor to certain lenders or investors as part of an alleged Ponzi scheme conducted by the debtor. The following defendants filed motions to dismiss in this adversary proceeding:

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<u>Defendant</u>	<u>Date Filed</u>	<u>ECF No.</u>
Luke Saunders	December 15, 2011	94
Kirkwood Kitchens, Inc.	February 8, 2012	103
Reinhard Paul	February 8, 2012	105
Elizabeth Weinberger-Van Dyk	February 8, 2012	107
Nicole Haer	April 16, 2012	201
Amy Belling	June 26, 2012	252
Chantelle Clarke	June 26, 2012	254
Rhonda Harris	June 26, 2012	256

In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal raised in the subject motions are the same as those raised in the Previous Decision. Many of the facts in the Previous Decision are relevant to the subject motions.

The trustee in a supplemental affidavit of Curtis Frye, ECF No. 219, and the defendants, by declarations, provided the following evidence:

1. Luke Saunders - The trustee presented evidence in this case that the defendant loaned or invested an unknown amount and four (4) promissory notes were issued. In 17 distributions occurring from August 2004 to August 2008, the defendant received \$29,700 (CAN). According to the trustee, the defendant filed a proof of claim in the amount of \$28,899 in the underlying LLS America case. By declaration (ECF No. 101), the defendant presented evidence that he resides in Canada, rarely travels to the United States, and each promissory note listed a Canadian entity as borrower with distributions primarily made from Canadian entities. The declaration further states that the loans or investments were solicited in Canada, but no details were provided regarding the manner of the solicitation.

2. Kirkwood Kitchens, Inc. - The trustee presented evidence in this case that the defendant loaned or invested an unknown amount and two (2) promissory notes were issued. In 10 distributions occurring from June 2006 to July 2008, the defendant received \$37,500 (CAN). According to the trustee, the defendant filed a proof of claim

1 in the amount of \$50,115 in the underlying LLS America case. By declaration (ECF No.
2 104), Peter Allan Saunders, on behalf of the defendant, presented evidence that it was
3 formed under the laws of Canada, does not solicit any business in the United States, and
4 sent funds for investment to Canadian entities. Payments were primarily made from
5 Canadian entities. The declaration further states that the loans or investments were
6 solicited in Canada, but no details were provided regarding the manner of the
7 solicitation.

8 3. Reinhard Paul - The trustee presented evidence in this case that the
9 defendant loaned or invested \$10,000 (CAN) and six (6) promissory notes were issued.
10 In 97 distributions occurring from November 2001 to September 2008, the defendant
11 received \$28,037.30 (CAN). According to the trustee, the defendant filed a proof of
12 claim in the amount of \$23,000 in the underlying LLS America case. By declaration
13 (ECF No. 106), the defendant presented evidence that he resides in Canada, rarely
14 travels to the United States, and “virtually all” promissory notes listed a Canadian entity
15 as borrower with distributions primarily made from Canadian entities. The declaration
16 further states that the loans or investments were solicited in Canada, but no details were
17 provided regarding the manner of the solicitation.

18 4. Elizabeth Weinberger-Van Dyk - The trustee presented evidence in this case
19 that the defendant loaned or invested \$40,000 (CAN) with one (1) promissory note
20 issued. In 22 distributions occurring from July 2004 to January 2009, the defendant
21 received \$28,635.00 (CAN). According to the trustee, the defendant filed a proof of
22 claim in the amount of \$73,051.37 in the underlying LLS America case. By declaration
23 (ECF No. 108), the defendant presented evidence that she resides in Canada, rarely
24 travels to the United States, and each promissory note listed a Canadian entity as
25 borrower with the distributions primarily made from Canadian entities. The declaration
26 further states that the loans or investments were solicited in Canada, but no details were
27 provided regarding the manner of solicitation.

28 5. Nicole Haer - The trustee presented evidence in this case that the defendant

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1 loaned or invested \$25,000 (CAN) and three (3) promissory notes were issued. In 36
2 distributions occurring from November 2004 to January 2009, the defendant received
3 \$60,985.00 (CAN). According to the trustee, the defendant filed a proof of claim in the
4 amount of \$25,000 (CAN) in the underlying LLS America case. By declaration (ECF
5 No. 202) in this case, the defendant presented evidence that she resides in Canada, rarely
6 travels to the United States, and each promissory note listed a Canadian entity as
7 borrower with distributions primarily made from Canadian entities. The declaration
8 further states that the loans or investments were solicited in Canada, but no details were
9 provided regarding the manner of the solicitation.

10 The trustee in the affidavit of Curtis Frye filed in adversary proceeding No. 11-
11 80157-PCW, ECF No. 11, and the defendants, by declarations, provided the following
12 evidence:

13 1. Amy Belling - The trustee presented evidence that the defendant loaned or
14 invested an unknown amount and one (1) promissory note was issued. In 77 distributions
15 occurring from March 2003 to August 2008, the defendant received \$38,500 (CAN).
16 According to the trustee, the defendant filed a proof of claim in the amount of \$5,631.52
17 in the underlying LLS America case. By declaration (ECF No. 253) in this case, the
18 defendant presented evidence that she is a citizen of Canada and for several months each
19 year she lives in the United States, but otherwise lives in Canada. The declaration further
20 states that each promissory note listed a Canadian entity as borrower with distributions
21 made from Canadian entities, and that the loans or investments were solicited in Canada,
22 but no details were provided regarding the manner of the solicitation.

23 2. Chantelle Clarke - The trustee presented evidence that the defendant loaned
24 or invested \$30,000 (CAN) and two (2) promissory notes were issued. In 26 distributions
25 occurring from December 2005 to February 2009, the defendant received \$35,429
26 (CAN). According to the trustee, the defendant filed a proof of claim in the amount of
27 \$28,239.21 in the underlying LLS America case. By declaration (ECF No. 255) in this
28 case, the defendant presented evidence that she resides in Canada, rarely travels to the

United States, and each promissory note listed a Canadian entity as borrower with distributions primarily made from Canadian entities. The declaration further states that the loans or investments were solicited in Canada, but no details were provided regarding the manner of the solicitation.

5 3. Rhonda Harris - The trustee presented evidence that the defendant loaned
6 or invested an unknown amount and two (2) promissory notes were issued. In 199
7 distributions occurring from May 1999 to May 2008, the defendant received \$38,138.63
8 (CAN). According to the trustee, the defendant filed a proof of claim in the amount of
9 \$2,400 in the underlying LLS America case. By declaration (ECF No. 257) in this case,
10 the defendant presented evidence that she resides in Canada, rarely travels to the United
11 States, and each promissory note listed a Canadian entity as borrower with distributions
12 primarily made from Canadian entities. The declaration further states that the loans or
13 investments were solicited in Canada, but no details were provided regarding the manner
14 of the solicitation.

The grounds for dismissal in the subject motions are: (1) ineffective service of process; (2) improper extraterritorial application of United States bankruptcy law; and (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P. (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set forth in the Previous Decision and is applicable to the subject motions.

20 As in the Previous Decision, one basis for the request to dismiss is the lack of
21 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of
22 claim is a consent to jurisdiction to adjudicate that claim and the related action brought
23 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding
24 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the
25 Previous Decision and is applicable to the subject motions, which are **DENIED**. Counsel
26 for the defendants shall submit orders consistent with this decision.

28 //END OF MEMORANDUM DECISION//